

MONTANA LEGISLATIVE HISTORY

Chapter 1 19 86Bill H 13 S _____Original bill & history ☒ CH. Committee on JudiciaryHearing Date(s) Mar 26 ☒ C_____ ☐ C_____ ☐ C_____ ☐ CDate Out Mar 26 ☒ CS. Committee on Business & IndustryHearing Date(s) Mar 28 ☒ C_____ ☐ C_____ ☐ C_____ ☐ CMar 28 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

HOUSE BILL NO. 13

INTRODUCED BY D. BROWN, PAVLOVICH, DRISCOLL, LYNCH,
GOULD, CODY, DARKO, HAGER, KOLSTAD, FULLER, COHEN,
JACK MOORE, HARRINGTON, MANUEL, JONES, O'CONNELL,
KRUEGER, QUILICI, IVERSON, JACOBSON, PATTERSON, SWIFT,
C. SMITH, PHILLIPS, ASAY, ELLISON, KEYSER, HARP, JENKINS,
REGAN, MCCALLUM, HARBIN, ANDERSON, GILBERT, KEATING, RANEY,
DANIELS, CAMPBELL, MONTAYNE, JANET MOORE, HANSEN, HAFFEY,
GLASER, WINSLOW, ZABROCKI, RAPP-SVRCEK, NISBET, ADDY,
BACHINI, HALLIGAN, BOYLAN, GOODOVER, TVEIT, E. SMITH,
STORY, SHAW, B. BROWN, FARRELL, SEVERSON, HIMSL, THAYER,
GALT, KEENAN, BRANDEWIE, SALES, FRITZ, HOLLIDAY, KOEHNKE,
MCCORMICK, POFF, KENNERLY, HOWE, HART, PISTORIA,
SCHYE, J. BROWN, HAND, STANG, GARCIA, ABRAMS

IN THE HOUSE

March 25, 1986

Introduced and referred to
Committee on Judiciary.

On motion by Chief Sponsor,
Representatives McCormick,
Poff, Kennerly, Howe, Hart,
Pistoria, Schye, J. Brown,
Hand, Stang, Garcia, and
Abrams added as sponsors.

March 26, 1986

Committee recommend bill do
pass as amended. Report
adopted.

March 27, 1986

Bill printed and placed on
members' desks.

Second reading, do pass as
amended.

Third reading, passed.

Transmitted to Senate.

IN THE SENATE

March 28, 1986

Introduced and referred to
Committee on Business and
Industry.

Committee recommend bill be
concurrent in. Report adopted.

Second reading, concurrent in.

Third reading, concurrent in.
Ayes, 50; Noes, 0.

Returned to House.

IN THE HOUSE

March 29, 1986

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *Handwritten signatures and notes above line 1*
2 INTRODUCED BY *Handwritten signature* BILL NO. *13*
3 *Handwritten signature* KRUEGER *Handwritten signature*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE CRITERIA
5 GOVERNING THE LIABILITY OF A PERSON OR ENTITY FURNISHING AN
6 ALCOHOLIC BEVERAGE FOR INJURY OR DAMAGE ARISING FROM AN
7 EVENT INVOLVING THE CONSUMER; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."
9 *Handwritten signature*
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Civil liability for injuries involving
12 alcohol consumption. (1) The purpose of this section is to
13 set statutory criteria governing the liability of a person

14 or entity that furnishes an alcoholic beverage for injury or
15 damage arising from an event involving the person who
16 consumed the beverage.

17 (2) A person or entity furnishing an alcoholic
18 beverage may not be found liable for injury or damage
19 arising from an event involving the consumer wholly or
20 partially on the basis of a provision or a violation of a
21 provision of Title 16 or any other title of the Montana Code
22 Annotated, except this section.

23 (3) Furnishing a person with an alcoholic beverage is
24 not a cause of, or grounds for finding the furnishing person
25 or entity liable for, injury or damage wholly or partly

1 arising from an event involving the person who consumed the
2 beverage unless:

3 (a) the consumer was under the legal drinking age and
4 the furnishing person knew that the consumer was underage or
5 did not make a reasonable attempt to determine the
6 consumer's age;

7 (b) the consumer was visibly intoxicated and the
8 furnishing person knew or reasonably should have known that
9 the consumer was visibly intoxicated; or

10 (c) the furnishing person forced or coerced the
11 consumption or told the consumer that the beverage contained
12 no alcohol.

13 Section 2. Effective date. This act is effective on
14 passage and approval.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
49th LEGISLATIVE SESSION -- SPECIAL SESSION II
HOUSE OF REPRESENTATIVES

March 26, 1986

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Wednesday, March 26, 1986 at 1:30 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Rapp-Svrcek.

CONSIDERATION OF HOUSE BILL NO. 13: Rep. Dave Brown, House District #72, chief sponsor of HB 13, stated that this bill is totally consistent with the drunk driving legislation that society has seen fit to adopt both in Montana and nationwide. It places the responsibility for one's actions back on the individual where it belongs and from where the supreme court chose to take it. This bill provides a statutory alternative to two recent Montana Supreme Court decisions finding that those who furnish alcoholic beverages may be found liable to the consumer of the beverages and another person injured by an intoxicated consumer of the beverages for injuries suffered by that consumer or other persons. It is essentially a third party liability restriction. Rep. Brown explained the sections of the bill. He said the basic part of the language dealing with limiting the third party liability comes from the Wisconsin law. He chose to adopt this language primarily because of its brevity and pointedness. Rep. Brown pointed out that not only are bar and tavern owners having problems with the recent supreme court decision, but private parties who serve alcoholic beverages are affected as well.

PROPOSERS: Rep. Budd Gould, also a co-sponsor of this bill, House District #61, testified. He said that HB 14 which deals with liquor stores, the agency liquor stores are now being considered by the insurance companies to be no different than a tavern. Many of these agency liquor stores have had their insurance go up by as much as 600%. He said this legislation is vitally important for that interest as well.

Sen. Richard Manning, Senate District #18, said that a few tavern owners in his district are facing crucial insurance costs because consumers are not being made responsible for their own actions. He said that he is 150% in support of this bill and feels it is time something is done.

Phil Strobe, representing the Montana Taverns Association, stated that the association is an industry that is finding it either impossible to obtain coverage; or for those who can obtain coverage, it is extremely costly or is offered

with so many exceptions in it that it looks like swiss cheese. For those who are in the businesses in which the primary economic activity is the sale of liquor by the drink or by the package, it is almost impossible to find anyone who can get coverage in 1986. For those who have additional lines of income and substantial amounts of additional lines of income and the liquor is just one of the exposures they have in a small share of their total, they are still finding it impossible to buy some kinds of insurance coverage. In most cases, they are getting limits put on the coverage that are almost valueless to them. The limits are being put on at such a low level that their excess exposure puts them in the position that rather than paying the premium, they put it in a savings account and assume all the risk. Mr. Strobe continued by saying many of those who are finding the premiums excessive or the coverage non-available are doing the next best thing: They are segregating their assets in a series of ownerships with the idea of segregating out their homes, their cars, etc from the business they are in.

Mr. Strobe said the he has to assume that when the supreme court rendered these two decisions, it didn't refer to the constitution; but it merely referred to what it felt was its right to find in the common law a theory of law that would hold those who are purveyors of goods and services liable to someone because of the way in which the consumer used the product. Mr. Strobe said he hoped the committee would take the optimistic view that the supreme court, if confronted with the opportunity to hold this unconstitutional, would say that if they had wanted to hold that theory of law unconstitutional or the prohibition against it, they would have done so when they rendered their opinion within the same month in which they rendered the liability opinion.

Mr. Strobe submitted a few amendments which was marked Exhibit 1. He also stated his support for Rep. Brown's proposed amendment which was marked Exhibit 2.

Ernie Krassesch, a tavern owner from Black Eagle, said if he is unable to obtain liquor liability insurance, it is doubtful he will remain in business. His recent insurance premium -- which does not include any liquor coverage for liability -- cost him \$5,092 this year compared to his last year figure of \$2,500.

John Hoyt, a lawyer from Great Falls representing the United Transportation Union, strongly agrees with the theme of the

bar and tavern owners emphasizing individual responsibility. He feels there may be a problem if the bill isn't further amended, however. He suggested the bill be amended on page 2, line 7 by deleting all of the material following "Intoxicated". It is his feeling that the additional language could get someone in trouble down the line.

Al Staley, tavern owner from Billings, said his position is that he presently has no liquor liability insurance. He told the committee that if he is hit with a massive suit, he will have to hand in his keys to his tavern. He feels that the individual should be responsible for his own deeds.

Roland D. Pratt, executive director of the Montana Restaurant Association, voiced his support for this bill because of the increasing cost of insurance premiums. He further supports the proposed amendments.

Roger McGlenn, representing the Independent Insurance Agents Association of Montana, feels there needs to be statutory guidelines established on this issue. He feels that if the guidelines for insurance companies to assess their exposure and the risk potential of this type of liability are established, the availability of the product will increase.

Glen Drake, representing the American Insurance Association, stated that legislative guidelines are a necessity. We need this bill now because the law has changed recently regarding the liable party.

Rep. Paul Pistoria, House District #36, stated that 10,000 people in this state are employed some way or another by the purveyors of alcohol industry. Something has to be done for these people, and this is our opportunity to help them.

Rick DeJanna, an attorney from Kalispell, said the bill is good and the amendments make sense. However, he said the committee members should ask themselves if they view this bill as constitutional. He said the legislature is a co-equal branch of this government. He advised the committee not to allow the supreme court to usurp their power as has been happening over the last four or five years. Mr. DeJanna said he doesn't know what to tell his tavern owner clients on how to protect themselves, because he doesn't know where the supreme court is going to leave us. He feels it is the duty of the legislature to spell out what the policy of the state of Montana is.

Roger Tippy, representing the Montana Beer and Wine Wholesalers Association, urged the committee to give this bill favorable consideration. A copy of his written testimony was marked Exhibit 3 and attached hereto.

There being no further proponents or any opponents, Rep. Brown closed. He said he has a few problems with some of the amendments previously suggested which he said he would comment on during executive action.

QUESTIONS ON HB 13: In response to a question asked by Rep. Addy, Ernie Krassesch feels that passage of this bill will lower insurance premiums and make insurance more available. Rep. Addy requested Mr. Krassesch and other tavern owners to inform him this fall as to whether or not their premium rates do drop and whether or not insurance is made more available.

Rep. Spaeth said he had a problem with page 2, line 7 section (b) of the bill with the "visibly intoxicated" language. He said he could spend a lot of his client's money litigating that type of question. He asked the question, "Are we really going to be helping the barowner that much by leaving this particular paragraph in the bill?" Mr. Strobe said that if this whole subsection were eliminated, the criminal statute concerning an intoxicated person still remains. Mr. Englund also commented on this language.

Rep. Cobb wanted to know that if this legislation passes, will it hold up under the current supreme court ruling? Mr. Englund replied, "absolutely." He said the supreme court decision regarding the liquor liability cases that this bill is designed to deal with states very clearly that the legislature has the authority to prescribe conduct, and that once they do so, a violation of that conduct gives rise to liability. Mr. Englund sees absolutely no constitutional problem with this at all. Rep. Cobb further asked Mr. Englund if he meant that as long as the legislature in any kind of case delineates conduct, then are we going to override any supreme court ruling as it pertains to any liability? Mr. Englund stated that he believes the legislature can do that. He continued by saying under the Pfost case, the thing the legislature cannot do is that once they have recognized that an injury is recognized under the statutes as one for which someone can receive damages, the injured must receive full legal redress for those damages or the legislature can deny them full legal redress only upon a showing of a compelling state interest.

There being no further questions, hearing on HB 13 closed.

ACTION ON HB 13: Rep. Brown moved that his proposed amendments (Exhibit 2) be adopted. The motion was seconded by Rep. Keyser and carried unanimously. Rep. Brown commented on the other proposed amendments to HB 13. He stated that he didn't have any strong feelings about subsection (c) in the bill. However, he does feel that subsection (b) should be left alone, and he would resist any amendments to remove it. He said that this particular language is already in the Montana statutes. He thinks more "reasonably should have known" is a consistent standard and is applied in a number of other areas. He further believes the court's ability to make a decision may be hampered if this subsection (b) is removed. However, Rep. Spaeth said he doesn't feel that we are doing very much to change the present law with the LaCount decision by leaving (b) in the bill because he feels it codifies what the LaCount decision says. He doesn't think this language will do a great deal for the tavern owners, but rather it will actually spur a great deal more litigation by leaving it in there.

On that basis, Rep. Spaeth moved to delete subsection (b) in its entirety. The motion was seconded by Rep. Cobb and further discussed. Rep. Krueger resisted the motion by saying he feels under the supreme court language, this bill would be able to fall into the categories of establishing a standard.

Rep. Hannah asked Rep. Addy if we are just codifying what the supreme court said. Rep. Addy said it change the language, and he doesn't know how much it changes the standard of liability. He said HB 13 absolutely clarifies that if the tavern owner or their employees cannot reasonably tell that the person is intoxicated, they are not held liable. The bill clarifies it a bit even though Rep. Addy isn't sure that it changes the standard.

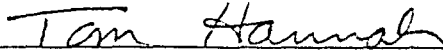
Rep. Spaeth asked Rep. Brown that if (b) is deleted, will it present problems as to whether or not the bill will get through the Senate. Rep. Brown said he wasn't sure what the Senate will end up doing.

Rep. Keyser wanted to know why Rep. Brown would want to leave subsection (b) in the bill which perhaps may leave

the possibility of raising at least three questions in an attorney's mind if it is already taken care in another statute. Rep. Brown said that by passing this legislation, the other statute would be eliminated. Unless it is kept in the bill that standard would not be addressed.

The question was called on Rep. Spaeth's motion to amend by deleting section (b) in its entirety, and said motion FAILED 3-13. (See roll call vote.) Rep. Brown further moved that HB 13 DO PASS AS AMENDED. The motion was seconded by Rep. Darko and carried unanimously.

ADJOURNMENT: Upon motion of Rep. Keyser, the meeting adjourned.



REP. TOM HANNAH, Chairman



Exhibit 3
3/26/86
HB 13
R. Tippy

March 26, 1986

The beer and wine wholesalers of Montana support HB 13. Although wholesalers do not sell or furnish beer or wine directly to consumers, they find the high cost or unavailability of liquor liability insurance affects the number of retailers to whom the wholesalers can sell.

We are not just talking about taverns when we refer to retailers. Softball tournaments, rodeos, and similar events often take out special permits to sell beer or wine on a one-time basis. They need an insurance package which often in the past has included liquor liability. Such coverage is now becoming unavailable and causing these organizations to cancel plans for beer stands and the like. The Great Falls Softball Association has announced they will not sell beer this summer without insurance, and the loss of revenue from this concession will cut into their program.

The bill before you is a moderate approach. It preserves the "visibly intoxicated" standard in the Nehring decision, restating that standard in terms of the server's duty. We have reviewed the proposed amendment to delete "or any other title" on page 1, line 21 and are in accord with that change. We understand that the bill does not need a codification instruction section, that Legislative Council would codify it in Title 27 without a formal instruction.

Please give this bill your favorable consideration.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13DATE March 26, 1986SPONSOR Rep. D. Brown

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Ken Vogel	Port City	✓	
John L. Brown	Abbeville	✓	
Bonnie G. Miller	Abbeville	✓	
Pauline L. Brown	Abbeville	✓	
John C. Brown	Tracy	✓	
Robert J. Brown	Tracy	✓	
John L. Brown	Tracy	✓	
Robert J. Brown	Fish Tail	✓	
John L. Brown	Virginia City	✓	
Robert J. Brown	Billings	✓	
John L. Brown	Harlingen	✓	
Bonnie G. Miller	Abbeville, MS	✓	
John L. Brown	Billings	✓	
John L. Brown	Billings	✓	
John L. Brown	MTA - Helena	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13

DATE March 26, 1986

SPONSOR Rep. D. Brown

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
HARVEY C. LEE	BOZEMAN	✓	
Lobby Bar.	Dillon	✓	
Don Hamilton	Helena	✓	
Lynn Miller	Helena	✓	
Don Lytle	Helena	—	
William J. Lee	Livingston	✓	
GINGER NELSEN	BOZEMAN	✓	
Beverly Humphrey	Dillon	✓	
Rodney Lee	LIVINGSTON	✓	
Roger W. Koring	Great Falls Chamber of Commerce	X	
Allen P. Lanning	Helena	✓	
DAN Anderson	Billings	✓	
LARRY McRAE	KALISPELL	✓	
Martin J. Jantz	Great Falls	✓	
Mona Hansen	Butte	✓	
Alvin Dagen Baracca's	Butte	✓	
George Anderson	Biggs	✓	
Wick Berg	Biggs	✓	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Hank Wentz's Stockman Bar Hauler Mt.

VISITORS' REGISTER

JUDICIARY COMMITTEE

HB 13

March 26, 1986

Alma's Baracca	KILBR'S
Marie Hansen	PANDORA CLUB
Gary Dair	Sequoia
Mauna Dair	Stinson L.A.
Nan Dandling	Pastime L.A.
Howard Bailor	Park County T.A.
Barb DeGunn	Kalispell, MT
Stephen Cassey	Kalispell, MT
Sally McRae	Kalispell
Mike Sullen	Kalispell
Larry Matic	Kalispell
Franklin Buellch	Prain
Chester Buellch	"
Ran Larson	Helena
Ken Durling	Belt
Bill & Mabel Drysdale	Clyde Park
Donald & Doris	Helena
Grace Sillette	Borders Lounge
Henry Borman - Bears Ears	Whitehall
J. L. Ewison	Whitehall Tavern
Bob Delme	Borley Whitehall
Bill Jester	Helena
John C. Hoyt	U.T.U. Get Falls

Support

VISITORS' REGISTER

JUDICIARY COMMITTEE

HB 13

March 26, 1986

Bob DeLore	Bowman Corner	
Arden DeLore	Broad Heron Augusta	
Alvin Drake	American Indian Museum Helena	Support
Roger M. Glenn	Independent Ins. Agents of MT - HB-13	Support
Don Thomas	Western Bar	Augusta MT
Rich Lynda	Snow Creek Saloon	Red Lodge
Duke J. Hensley	Buck, Wolf Creek, MT.	
P.L. Murphy	Murphy's Club TAVERN	Dutton, Mont.
Edmond Pratt	MT Restaurant Assoc.	Helena
Jerome M. Leckie	Dondeauville MT	
Pete Olson	Angels Bar	
Don & Hank Menden	Stuckman Bar	Helena
Phil Mackinn	Joliet Bar	Joliet MT.
	Red Lodge	
Pete J. Thomas	Western Bar	Augusta MT.
Ed and Billie M. Wilman	Winter Bar	Boulder MT
Fay Crosby	Stueg's Bar	Ballwin, Betsy
LeResovich	Hittie John's Bar	Bozeman MT.
Budd Gould	Rep. Dist 61	Missoula MT
Don DeTienne	Bar Plaza Hotel	Helena
Barrell	Moose Bar	DeLore

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13DATE March 26, 1986SPONSOR Rep. Dave Brown

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
BAY TRUDEL	UFCW #13		
Jordan Morris	MA Co.	✓	
Phil Stroppe	MTA	✓	
Art Steinhilber	CORNER BAR HILMA	✓	
Bert Danko	MTA	✓	
Jay Kato	MTA	✓	
Linda F. Holt	MTA	✓	
Wesley H. Kato	MTA	✓	
Franky Keith	Red Kooter	X	
Lyle Johnson	CRYSTAL BAR	✓	
Harold Shunk	Shakey Tunnels	✓	
Mary Johnson	Shakey Tunnels	✓	
Harold Smith	Bangs Club 109	✓	
Betsy Steinhilber	THE CIRCLE INN	✓	
Joe Duffin	Cadillac	✓	
Senator Richard E. Manning	Senate Dist 18	✓	
Mike Hellesy	Piggly Wiggly Grocery	✓	
BUTCH MEYER	Cadillac Bar	✓	
Thelma Rhine	Shakey Tunnels Bar	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. HB 13DATE March 26, 1986SPONSOR Rep. Dave Brown

NAME (please print)	RESIDENCE REPRESENTING	SUPPORT	OPPOSE
John Kray	Pineas Bros Cat Bank	✓	
Dick Hentoff	Honey Pizza Shop	✓	
Antonia Cunningham	Libby's Bar & Grill	✓	
Walt Hill	Great Bar & Grill	✓	
Wayne Brown	May's Bar & Grill	✓	
Samuel Johnson	Longbranch Saloon & Eatery	✓	
John W. Hooper	Hwy 14-Way Long Co	✓	
Deane L. Hooper	Little John's Bar	✓	
Earl Spassich	Barries	✓	
Harold & Ramona Bushman	Landmark Inn	✓	
Bert & Maria Conant	Pazy's Inn	✓	
Anthony E. Juntunen	Bob's Bar & Motel	✓	
Dick & Mary Bush	Fish & Game	✓	
Clara Spassich	Hillway House & Grill	✓	
Walter Spassich	Hillway House & Grill	✓	
Robert L. Bryan	Calvin's Rest	✓	
Jim Boppre	OFFICE BAR	✓	
EW Canture	Other Place	✓	
Norma Canture	Other Place	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

NAME Phil Markin BILL NO. _____
ADDRESS P.O. Box 366 Joliet Mt. DATE 3/24/82
WHOM DO YOU REPRESENT? Joliet Bar + Grill
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Rich Lynde BILL NO. 13
ADDRESS 124 S. BROADWAY RED LODGE, MT DATE 3/26/86
WHOM DO YOU REPRESENT? Snow Creek Saloon
SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME Joe Flynn BILL NO. 13
ADDRESS PO Box 2152 Riverdale Md DATE 3/26/86
WHOM DO YOU REPRESENT? SAC B...
SUPPORT --- OPPOSE --- AMEND ---

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

WITNESS STATEMENT

NAME LARRY McRAE BILL NO. HB-13
ADDRESS KALISPELL, MT 59901 DATE 3/2
WHOM DO YOU REPRESENT? CUTLAW INN, KALISPELL, MT
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: ~~I~~ I would urge the passing of HB-13.

I manage a convention facility in Kalispell. I have correspondence from the Montana Business Association, indicating they will no longer ~~be~~ sponsor nor have hotel cocktail parties at any MBA convention nor any other meeting.

I should think, perhaps, have a ripple effect it will mean hundreds of thousands of dollars in lost revenues to hotels and motel meeting convention in Montana.

This will have a great effect on the economy of our State. Lost revenues mean lost employment, lost taxes and lost revenues to all ^{other} businesses who are located in communities meeting convention.

As an operator for over 25 years, I have never seen such low revenues as we have seen in the last year, especially in the last four months.

Insurance is nearly impossible for us to secure. We saw our rates double at renewal this year. Besides the rate increase, we saw our liability coverage decrease by 70%. We were fortunate to receive coverage, indeed until one week prior to our policy's expiration it appeared coverage would not be available.

Exhibit 2
3/26/86
HB 13
D. Brown

AMENDMENTS TO HB 13, FIRST READING WHITE COPY

1. Page 1, line 21.

Following: "Title 16"

Strike: "or any other title"

2. Page 1, line 22.

Following: "Annotated"

Strike: ", except this section"

WITNESS STATEMENT

Name Phil Strobe

Committee On Jackson

Address Box 874

Date 3 - 26 - 86

Representing MTA

Support ✓

Bill No. HB 13

Oppose _____

Amend ✓

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

Amend
page 1 - line 15+16 - delete "person who consumed the beverage" insert "consumer".

2.

3.

" - line 21 - delete "or any other title"

4.

page 2 - line 8 - delete "or reasonably should have known"

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

ROLL CALL VOTE

HOUSE JUDICIARY

COMMITTEE

DATE March 26, 1986 BILL NO. HB 13

NUMBER. 2:45 p.m.

NAME	AYE	NAY
BROWN, Dave (Vice-Chairman)		✓
ADDY, Kelly		✓
COBB, John	✓	
DARKO, Paula		✓
EUDAILY, Ralph		✓
GOULD, Budd		✓
GRADY, Ed		✓
KEYSER, Kerry		✓
KRUEGER, Kurt		✓
MERCER, John		
MILES, Joan		✓
MONTAYNE, John		✓
O'HARA, Jesse		✓
POFF, Bing		✓
RAPP-SVRCEK, Paul		
SPAETH, Garv	✓	
NEILL, Charlotte		✓
HANNAH, Tom (Chairman)	✓	

TALLY

3

13

Marcene Lynn
Secretary

Tom Hannah
Chairman

MOTION: Rep. Spaeth moved to delete subsection (b) on page 2,
beginning on line 7 in its entirety. The motion was seconded by
Rep. Cobb and failed 3-13.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

SECOND SPECIAL 49th LEGISLATIVE SESSION -- 1986

Date March 26, 1986 (1:30

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Hannah, Chairman	✓		
Rep. Dave Brown, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. John Cobb	✓		
Rep. Paula Darko	✓		
Rep. Ralph Eudaily	✓		
Rep. Budd Gould	✓		
Rep. Edward Grady	✓		
Rep. Kerry Keyser	✓		
Rep. Kurt Krueger	✓		
Rep. John Mercer	✓		
Rep. Joan Miles	✓		
Rep. John Montayne	✓		
Rep. Jesse O'Hara	✓		
Rep. Bing Poff	✓		
Rep. Paul Rapp-Svrcek		✓	
Rep. Gary Spaeth	✓		
Rep. Charlotte Neill	✓		

ROLL CALL

BUSINESS AND INDUSTRY

COMMITTEE

48th LEGISLATIVE SESSION -- 1986

Date 3/26/86

SENATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
SENATOR HALLIGAN, Chrmn.	✓		
SENATOR CHRISTIAENS, V. Chrmn	✓		
SENATOR BOYLAN	✓		
SENATOR FULLER	✓		
SENATOR GAGE	✓		
SENATOR GOODOVER	✓		
SENATOR KOLSTAD	✓		
SENATOR NEUMAN	✓		
SENATOR THAYER	✓		
SENATOR WILLIAMS	✓		
SENATOR WEEDING	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 26

86
19

JUDICIARY

Mr. Speaker: We, the committee on

HOUSE BILL NO. 13

report

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. TOM BARRER

Chairman

EXEMPT THOSE WHO FURNISH ALCOHOLIC BEVERAGES FROM LIABILITY TO CONSUMERS

BE AMENDED AS FOLLOWS:

1. Page 1, line 21

Following: "Title 16"

Strike: "or any other title"

2. Page 1, line 22

Following: "Annotated"

Strike: ", except this section"

FIRST

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49TH LEGISLATURE, SECOND SPECIAL SESSION
MINUTES OF THE MEETING
BUSINESS AND INDUSTRY COMMITTEE
MONTANA STATE SENATE

March 28, 1986

The Business and Industry Committee meeting was called to order on the above date, in Room 410 of the State Capitol Building at 11:00 a.m., by Chairman Mike Halligan.

ROLL CALL: All members present.

CONSIDERATION OF HB 13: Senator J. D. Lynch, co-sponsor of HB 13, said this bill simply tries to address a ridiculous ruling of the Montana Supreme Court last year that hardly anyone thinks makes sense. This bill tries to rectify that ruling which said if a person gets intoxicated at a saloon, the saloon is responsible in case there is an injury further down the line. Some of the editorials in the paper said we can carry that even further. The State sold the saloon the alcohol so therefore the State can also be liable in case there is an accident down the road. You can carry it further even yet, as far as the farmer is concerned, by saying he sold the barley and on and on it goes. The basic concept here is in fact whether the drinker is liable for his own actions. There is a provision for protection from gross negligence. Universally in Montana we have heard that this is a ruling that should be rectified and the Supreme Court says the only way we can do that is with this statute.

PROPOSERS: Karl Englund, representing the Montana Trial Lawyers Association, referred to the Supreme Court decision in Lacounte which said there is a statute in Montana that says it is wrong to sell alcohol to someone who is actually, obviously, or apparently intoxicated. Then the Supreme Court said the Legislature is the one who has the right to define what conduct is acceptable and what conduct is unacceptable in the State of Montana. When the Legislature passed that statute, then it set that standard. If a bar owner violated that statute then he was potentially liable for the injuries of his patrons. The statute is too broad for the issue of liability. The word "actually intoxicated" in that statute would mean that there is potential liability for everybody who is at a blood alcohol level of .10, or legally intoxicated. That would mean a bar owner would have to put a breathalyzer at every chair.

He explained that Representative Brown, in consultation with the Tavern Association and in consultation with him, put this bill together as a way to eliminate the problem the Supreme Court created in the Lacounte case. We will have a balance here so when a hypothetical situation comes up where you have someone who serves a person who is really intoxicated, then the server may be potentially liable or if someone serves a minor

and doesn't make a reasonable attempt to find out if that person is a minor. It takes care of a real grievous situation. It strikes a good balance, is a good bill and is constitutional.

COMMITTEE QUESTIONS: Senator Neuman asked about the language struck by the House on page 2, lines 19 and 20. If a fellow came into a tavern and was drinking all night, shouldn't the tavern owner reasonably know that guy is drunk. Mr. Englund answered that they felt it was redundant because you have (b) on line 19 that says "visibly intoxicated". He didn't think the stricken language would add any more to it.

Senator Neuman asked if a person sits in a tavern all night and is able to walk out and isn't visibly drunk then the tavern isn't responsible. Mr. Englund answered that was correct if there isn't some outward manifestation that the guy is drunk, then the tavern owner hasn't any liability because he doesn't really know whether or not that person is or isn't drunk. Your point is that the owner has been serving him drinks and he knows he has had 27 drinks. In Missoula most of the taverns have several bartenders and not any one bartender knows how many drinks any one guy has had, and yet you are going to hold them all liable for something like that? It really creates a mess. They worked very hard at defining "visibly". They talked about "obviously", "grossly", "gross negligence". They decided "visibly" was the best word to use because what that means is, "can you see that this guy is drunk." Then the jury is going to have to decide if that person was drunk enough to pose liability.

Senator Thayer wanted to know if this bill protected an individual who serves someone in his home. He was told yes, by Mr. Englund.

Senator Thayer was concerned about the word "consumer". Did it mean consumption or purchaser. Mr. Englund thought it meant a person who consumed. Senator Thayer said that won't be stretched out to mean the one who furnishes the drinks then. He didn't want to have to charge for drinks in his home. Mr. Englund didn't think so. As a matter of legislative record, Senator Thayer wanted to make this clear as far as the Senate Business and Industry Committee is concerned.

Senator Weeding wondered where the redundancy before the House amendment was that takes care of this "reasonably should have known". Mr. Englund said that is the standard that is always in the law on that kind of situation. There was some concern in Committee that by repeating it in the bill you would gum the whole thing up and make it a lot less clear than just a straight statement from the Legislature that the only time the tavern owner will be liable in this

type of situation is when the person is visibly intoxicated.

Senator Fuller said several Senators were asking whether this would immediately be litigated. Mr. Englund said he would characterize first the argument people would use as to why it would be immediately litigated. They are saying there is some language in the Pfost decision that is quite expansive which says that anything the Legislature does that deals with personal injury affects the full rights of legal redress and could potentially violate the Constitution. But you have the authority to say a bar owner is liable only under these conditions, and a homeowner is liable only under these conditions for "slip and falls", employers are liable only under these conditions for wrongful discharge, etc. Once you do that you cannot deny someone under our current Constitution the right of full legal redress for that injury.

Senator Kolstad asked since this decision has been made, how many bar owners and bartenders have been found liable. Mr. Englund said it was his understanding in terms of cases in front of the Supreme Court, no bar owners have been found liable. One important point he wanted to stress was that the Supreme Court in Montana has never finally ruled on a case and said, yes, bar owner you are liable. What they did in the case that brought us here was say that the person who filed a lawsuit against a bar had the right to take that case in front of a jury. It actually wasn't that individual, it was that individual's insurance company that joined the bar in the Lacounte case.

Senator Christiaens asked if this bill is drafted so there will be no Constitutional problems. Every attorney he had talked to has given him different opinions. Mr. Englund's opinion was yes. If this bill can't pass constitutional muster under the Pfost decision, then what the court would be saying in that case is that no bill could pass constitutional muster and you would need to amend the Constitution which you are going to propose this time anyway.

Senator Goodover wanted to know how this law would apply to him as a bar owner if he was not in his bar but vacationing in Phoenix. Karl Englund said he thinks you go back to the doctrine respondent superior, ie, an employer is responsible for the acts of his employees.

FURTHER PROPONENTS: Representative Bob Pavlovich, also a co-sponsor of the bill, said he appeared on behalf of Representative Brown who was in another hearing and presented the summary of the bill, Exhibit #1.

He then went on to say he has been in the business for 35 years and would like to retire. After the last case, he felt this could be impossible. He could end up losing his whole livelihood and everything he has worked for. As it is

now, come April 4, he will have no liability insurance. There is a possibility he can buy some from a company in Italy. About 1500 other tavern owners are facing the same problem. The taverns are going to be closed up or someone else is going to own them. There is only one other solution and that is they may have to incorporate themselves if they can legally, and try to get out of this mess or take their chances and hope they won't have anything left to lose. If they don't get some relief, he said the main streets of Montana were going to be pretty dark.

Roger Tippy, counsel and secretary of the Montana Beer and Wine Wholesalers Association, said they are in strong support of the bill. He said this affects not only the tavern owners but the softball association will not be able to have a beer stand this summer and will lose that revenue. Rodeos throughout the region who sell beer under a special permit probably won't be able to get insurance. The scope and impact is far wider than just the on premise license.

Donald W. Larson, registered lobbyist for the Taverns Association and chairman of their legislative committee wished to address two points. Number one, this concerns 100% of the alcohol consumed, not just what is consumed in our establishments. It concerns all the alcohol consumed throughout the state. Their industry spends more money telling people not to consume their product than they do telling them to consume it. They have on-going programs such as The Techniques of Alcohol Management, All Abroad Program, TIPS Program, and Gain Program. These programs try to teach their people, the managers and servers of alcoholic beverages, how to identify and handle these situations. It is going to continue no matter what happens. Secondly, he has taken tests on how much you can consume before you become visibly intoxicated and with each person it is a different situation. They try to adapt their people to the fact that if someone happens to be sitting there all day long, that bartender in his establishment knows about how many drinks that person has had.

Roland D. Pratt, Executive Secretary of Montana Restaurant Association said their association, in conjunction with the Tavern Association and both their national organizations are highly involved in the training of their servers. It doesn't do their establishments any good at all to have an individual become intoxicated and then go out and be involved in an accident. He cited a suit that is pending in another state where an individual was intoxicated prior to entering the establishment. He was refused service. The individual left, was involved in an accident and the bar was sued, when in fact, they were not liable.

liable.

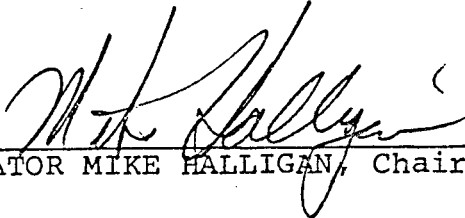
Senator Richard Manning said he isn't an attorney and doesn't own a bar but he does know this law is protection for everyone in this room who is old enough to drink because, without this protection, somebody else will be responsible for the drinkers' actions. When he was growing up he was taught you are responsible for your own actions. He gave the Committee a cutout from an article found in a Great Falls Highschool paper written by a young lady whose father had a slight drinking problem. Exhibit # 2. He said this article gives you an idea that young people today realize who has to be responsible for their own actions. He asked the Committee to recommend a do pass.

OPPONENTS: None.

COMMITTEE QUESTIONS: None.

DISPOSITION OF HB 13: Senator Goodover moved HB 13 BE CONCURRED IN. Motion seconded. Senator Halligan called for the vote and the motion carried. Senator Halligan will carry the bill on the Senate floor.

There being no further business, the meeting adjourned.



SENATOR MIKE HALLIGAN, Chairman

SUMMARY OF REP. DAVE BROWN'S BILL TO SET CRITERIA FOR LIABILITY OF PERSONS
FURNISHING ALCOHOLIC BEVERAGES

This bill provides a statutory alternative to the two recent Montana Supreme Court decisions finding that those who furnish alcoholic beverages may be found liable to a consumer of the beverages and other persons injured by an intoxicated consumer of the beverages for injuries suffered by the consumer or the other persons.

Subsections (1) and (2) of section 1 of the bill are intended to make it clear that the Legislature wishes section 1 and only section 1 to govern liability and that no other section of the Montana Code Annotated may be used to find liability, including 16-3-301, 16-6-304, and 16-6-305, MCA, the sections used by the court in its two recent cases to find that liability may be imposed.

Subsection (3) of section 1 is a compromise approach stating the criteria for liability. The opening paragraph is a basic non-liability provision and is followed by three exceptions, (3)(a), (3)(b), and (3)(c), to the general non-liability rule. Liability may be imposed under each of the three exceptions. Each exception is now the law in one or more states. Exception (3)(a) is commonly found in the states. The idea behind this exception is that minors are not mature enough to handle alcohol and thus the theory that the consumer of alcohol is and should be solely responsible for injuries he causes to himself or other persons does not apply.

Exception (3)(b) is now the law in at least five states. If a person is visibly drunk it is obvious to the person furnishing him an alcoholic beverage, or it should be obvious, that he is no longer capable of acting responsibly and may be a danger to himself and others.

Exception (3)(c) was enacted in Wisconsin in late 1985. If a person is forced, coerced, or tricked into consuming an alcoholic beverage the provider of the beverage may be held liable for injury to the consumer and persons injured by the consumer.

The general non-liability rule and each of the three exceptions apply to "social hosts" (private parties and other instances in which alcohol is not furnished for profit) as well as to taverns and other entities (or persons) furnishing alcohol for profit.

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Tavern Owners Held Responsible For Drunk Drivers?

By Tami Winjum

Isn't it only obvious that a drunk driver is at fault if he hurts someone while he is driving? I thought so, too. On January 22, the Montana Supreme Court overturned a 1979 law which stated that an intoxicated person is liable for the injuries he causes, and also that a bar owner is liable only if he serves a customer who is in a "helpless condition". Now, tavern owners are legally responsible for injuries caused by their drunk customers.

First of all, an owner of a bar is trying to run a business. Serving customers is their job. Their job is also wanting to make sure no one else is going to drive drunk. How are they to determine if the customer is even driving? Maybe they walked or got a ride there! When the bar is packed to the capacity and everyone is drinking, what are they supposed to do? "Okay, I can't serve anyone again until I check to see who's 'helplessly intoxicated' and who's not. Those that are I'll take your keys!" Most people go to the bar to drink. Even after one drink they shouldn't be driving. If they are, it is their responsibility, not the bar owners. They aren't paid to babysit. They're paid to serve their customers.

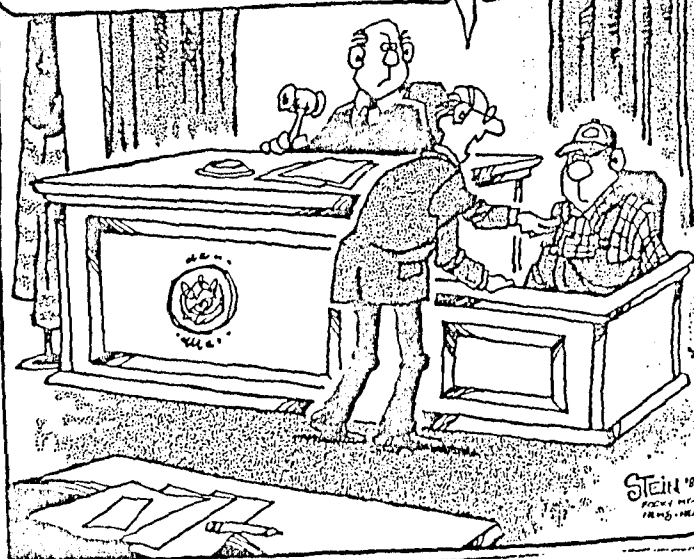
Then there's the fact that liquor stores and grocery stores sell alcohol. A host at a party serves it. Now if tavern owners are held responsible, why not make liquor store and grocery store owners held responsible? If it got right down to that, the bars and selling of alcohol may as well be illegal. People will still find the alcohol — and still drive drunk. Then who is to blame? The drunk drivers mother?

Also, if there's a case that comes upon trying to determine who's at fault — the drunk driver or the tavern owner — the authorities are going to look at whether or not the customer was "helplessly intoxicated" while being served. Who's to determine that? Of course the bar owner is going to say the customer wasn't helplessly drunk. The drunk driver is going to say he didn't even know he wanted the alcohol.

A drunk driver chooses to drink, and he chooses to drive, therefore he's responsible for his actions. Drunk driving is illegal! Why make that simple statement complicated by putting exceptions on it?

Cutting classes is against school rules. "Well, my best friend made me do it." Is it their fault now? And do they get the punishment?

SO YOU ADMIT IT: **YOU** PLANTED THE CORN USED BY THE DISTILLERY TO MAKE THE WHISKEY SOLD TO THE BAR THAT SERVED MY CLIENT, CAUSING HIM TO HAVE AN ACCIDENT WHILE DRIVING HOME DRUNK!



COMMITTEE ON BUSINESS & INDUSTRY COMMITTEE

[illegible]

(Please leave prepared statement with Secretary)